

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/29/09

DEPT. 23

HONORABLE ZAVEN V. SINANIAN

JUDGE

I. AYALA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. LAM, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC406904

Plaintiff

Counsel

NO APPEARANCES

SAM LUTFI

VS

Defendant

LYNNE IRENE SPEARS ET AL

Counsel

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

On July 23, 2009, Defendant's Anti-Slapp motion was called for hearing, argued, and taken under submission.

The Court now issues its final ruling as follows:

INTRODUCTION AND BACKGROUND

On February 3, 2009, Plaintiff Sam Lutfi filed suit against Defendants Lynne Spears, Jamie Spears and Britney Spears in Los Angeles County Superior Court. The first amended complaint, filed on April 16, 2009, states six causes of action for: (1) libel; (2) defamation; (3) battery; (4) intentional infliction of emotional distress; (5) breach of contract; and (6) quantum meruit. The complaint concerns an acrimonious dispute amongst Lutfi on the one hand and Jamie and Lynne Spears on the other hand as to the former's influence in the life of the Spears' daughter, Britney - the famous singer and recording artist. The complaint alleges that Lutfi and Britney initially developed a close relationship, including Lutfi providing Britney counsel in connection with her legal affairs, her relationships, and her business - including her next album. At this time, Jamie and Lynne were apparently estranged from Britney. The complaint alleges that Britney referred to Lutfi as her "manager" and

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treated him as such in connection with the Blackout album. Lutfi, for his part, is alleged to have performed the services of a business manager and a personal assistant for Britney. The complaint alleges that during this period, Jamie and Lynne attempted to re-establish contact with Britney and "re-establish control of her life."

Apparently, Lutfi was an impediment to Jamie and Lynne's so-called scheme to gain control of Britney's life, so the complaint alleges they undertook "a campaign of slander, libel and defamation aimed at discrediting, destroying and physically and emotionally intimidating Lutfi in order to drive him out of Britney's life." Specifically, the complaint raises defamation claims against Lynne in connection with her book Through the Storm, which apparently includes chapters discussing Lutfi's relationship with Britney in a derogatory light. The complaint also seeks recovery for a battery by Jamie and for intentional infliction of emotional distress. Finally, the complaint seeks to recover against Britney for an alleged breach of contract.

On June 15, 2009, Lynne Spears filed a special motion to strike the complaint, pursuant to CCP Section 425.16 (anti-SLAPP statute), challenging the first, second and fourth causes of action. On July 6, 2009, Lutfi filed an opposition to the motion. On July 20, 2009, Lynne Spears filed a reply.

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NATURE OF PROCEEDINGS:

REQUEST FOR JUDICIAL NOTICE & OBJECTIONS

The special motion to strike is accompanied by a lengthy request for judicial notice filed by Lynne Spears, seeking judicial notice of various matters in connection with her motion. The opposition of Sam Lutfi includes a lengthy objection to this request for judicial notice. The Court rules on the various requests as follows:

* Exhibit 1 - Conservatorship Order in In re Britney Spears (BP 108870): The Court takes judicial notice of this order under Evidence Code Section 452(d) as a record of a court of this state.

* Exhibit 2 - Temporary Restraining Order against Lutfi (BP 108870): The Court takes judicial notice of this order under Evidence Code Section 452(d) as a record of a court of this state.

* Exhibit 3 - February 2008 Declaration of Lynne Spears (BP 108870): The Court takes judicial notice of this document under Evidence Code Section 452(d) as a record of a court of this state. The judicial notice by the Court is limited to the existence of the document in the Court's records, and not the truthfulness of the statements within the document. See, e.g., *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113; *Middlebrook-Anderson Co. v. Southwest Savings & Loan*

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Association (1971) 18 Cal.App.3d 1023, 1038.

* Exhibits 4-8 - Various Published Articles: Lynne Spears' request for judicial notice seeks notice of multiple articles published in widely diverse and nationally-read periodicals and internet sites, ranging from the Chicago Tribune and the Seattle Post-Intelligencer to TMZ.com and USMagazine.com, which discuss or mention Lutfi in connection with Britney. The Court takes judicial notice of the fact that these articles were published and that they concerned Lutfi and his relationship with Britney Spears, as these matters are not subject to reasonable dispute, pursuant to Evidence Code Section 452(h). Of course, the noticed matter is merely the fact of the various articles' publications and the general description of the content, not the truth of any assertions therein.

The Court rules on the objections by Lutfi submitted on July 6, 2009 along the lines mentioned above in conjunction with Lynne Spears' request for judicial notice. Therefore, the Court overrules Lutfi's Objections 1-8.

Lutfi also objects to the Declarations of Lynne Spears and Chip McGregor, Lynne Spears' literary agent, submitted in conjunction with the motion. Considering the objections, the Court rules as follows:

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* Concerning the Declaration of Lynne Spears, the Court overrules Objections 1, 6-8, 11-16, 18-24, 26-28, 30-31, and sustains the remainder of the Objections. The Court makes these rulings mindful that many - if not nearly all - of Lutfi's statements related by Lynne Spears are not admissible for the truth of the underlying matters, pursuant to the Hearsay Rule. However, the statements concerning Lynne Spears' impression (state of mind) of Lutfi's relationship with her daughter are still relevant and admissible regardless of the underlying truth or falsity - particularly considering the context presented by the instant motion.

* The Court overrules all Objections to the Declaration of Chip McGregor.

Lutfi, in conjunction with his opposition, submits his own request for judicial notice, seeking judicial notice of his first amended complaint in this action. It is difficult to imagine the Court denying this request - as it is a matter within the Court's own file. As a result, the request is not even necessary.

DISCUSSION AND RULINGS

A so-called SLAPP suit is a strategic lawsuit against public participation - in other words, a suit filed primarily for the purpose of chilling

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constitutionally-guaranteed rights to speech and petition. Code of Civil Procedure Section 425.16 governs the procedural method for summarily disposing of impermissible SLAPP suits. Section 425.16 provides, in relevant part, that:

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

* * *

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes:

* * *

(3) any written or oral statement or writing

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made in a place open to the public or a public forum in connection with an issue of public interest.

The Court's analysis of a special motion to strike is a two-part consideration. See CCP Section 425.16(b); see also Equilon Enterprises, LLC v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 66. Preliminarily, the Court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. If the Court finds that such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. See Premier Medical Management Systems, Inc. v. California Insurance Guarantee Association. (2006) 136 Cal.App.4th 464, 472.

The defamatory conduct alleged by Lynne Spears arises from the publication of her book (Paragraphs 24, 27-28 (libel); Paragraphs 24, 37-39 (defamation)). The intentional infliction claim is based on this publication as well (Paragraphs 52-53). Lutfi attempts to argue that statements in Lynne Spears' book were not "made in a place open to the public" and were not "in connection with an issue of public interest." Neither contention is persuasive. There is no indication that the book was never offered to the public; in fact, the McGregor Declaration (Paragraph 4) establishes that it was widely available.

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The language in *Kronemyer v. Internet Movie Data Base, Inc.* (2007) 150 Cal.App.4th 941, 950 concerning the definition of a "place open to the public" is instructive. The *Kronemyer* court noted that California defines the term as "a place that is open to the public where information is freely exchanged ... [u]nder its plain meaning, a public forum is not limited to a physical setting, but also includes other forms of public communication." *Id.* Specifically, *Kronemyer* described the internet as a place open to the public, noting that statements there are accessible to anyone who chooses to visit the site. *Id.* The analysis applies to Lynne Spears' book as well: the statements are accessible to anyone who wishes to read the book. The suggestion that Lutfi's relationship with Britney was not an issue of public interest is contrary to all reason - as indicated by Paragraphs 30, 40 and 41 of Lutfi's own complaint. See also *Nygaard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042, concluding that an issue of public interest is "any issue in which the public is interested." Therefore, the Court finds it unproblematic to apply the protections of the anti-SLAPP statute to Lynne Spears' statements in *Through the Storm*, because the claims fit neatly into the category of statements or conduct described by CCP Section 425.16(e)(3).

The second consideration on a special motion to strike under CCP Section 425.16 is whether the

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plaintiff has a probability of prevailing on the challenged causes of action. The burden shifts to the plaintiff at this point to demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment. See Premier Medical Management Systems, Inc., (2006) 136 Cal.App.4th at 472; see also Taus v. Loftus (2007) 40 Cal.4th 683, 714 - comparing the opposing plaintiff's burden to that of a moving party on a motion for summary judgment. This prong must be established by the introduction of admissible evidence. Chavez v. Mendoza (2001) 94 Cal.App.4th 1083, 1087. In analyzing the evidence, the court does not weigh credibility or assess comparative strength, but only considers the defendant's evidence to the extent that it would establish that the complaint is devoid of merit as a matter of law. See Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291.

Concerning the various causes of action, the Court rules as follows:

The presence of claims for libel and defamation are duplicative - as libel is a subset of defamation, according to statute. See Civil Code Section 44. The elements of a claim for libel are: (1) a false; (2) unprivileged; (3) publication by writing, printing, or other fixed representation; (4) which exposes a person to hatred, contempt, ridicule, or obloquy, or which causes person to be shunned or avoided, or

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which has a tendency to injure a person in his occupation. See Ruiz v. Harbor View Community Assn. (2005) 134 Cal.App.4th 1456, 1470-1471. Similarly, the elements for a claim of defamation are: (1) the intentional publication by a defendant; (2) of a statement of fact; (3) that is false; (4) defamatory; (5) unprivileged; and (6) has a natural tendency to injure or that causes special damages. See, e.g., Taus, 40 Cal.4th at 720. In this case, the Court notes that Lutfi is - at least - a limited public figure in connection with his relation with Britney, and therefore must show that the statements were made with knowledge of falsity or with reckless disregard as to their truth. See McGarry v. University of San Diego (2007) 154 Cal.App.4th 97, 113-114. The Court notes that Spears argues for the application of the "libel-proof" doctrine, which is to be "applied with caution, since so few plaintiffs will have so bad a reputation that they are not entitled to obtain redress for defamatory statements..." Guccione v. Hustler Magazine, Inc. (2nd Cir. 1986) 800 F.2d 298, 303.) The Court declines to apply the "libel-proof" doctrine to this case.

The complaint in this case alleges that Lynne Spears published a book (Paragraph 24) containing false statements (Paragraphs 27, 28, 39) concerning Lutfi which exposed him to hatred, contempt and ridicule (Paragraphs 30, 39). The complaint also alleges that the publication was undertaken by Spears with actual

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malice (Paragraphs 31,41). The complaint does not expressly plead the unprivileged nature of the statements, but no particular statutory privilege is suggested by the facts alleged, and Spears does not raise the issue. Moreover, the complaint is not merely based upon statements of opinion or expressions of ridicule by Spears, but also alleges the publication of factual allegations concerning Lutfi's conduct which he asserts are false (Paragraphs 27, 28, 29, 31). The Court finds, therefore, that the complaint is legally sufficient with respect to the libel and defamation claims.

The Court also finds that Lutfi has satisfied the requirement that he provide sufficient evidence to support his defamation-based claims as a prima facie matter. See Taus, 40 Cal.4th at 714. As noted above, the Court does not weigh evidence when considering the probability of prevailing - in other words, Lynne Spears' statements in her Declaration and the contradiction by the Declarations of Lutfi, Ghalib and Teixeira are not resolved by the Court at this juncture. See Soukup, 39 Cal.4th at 291. The scenario the Court is left with is the relatively uncontested publication of Through the Storm and the allegations therein - which are disputed by the parties.

The Court finds that the publication and the statements published are sufficient to establish a prima facie claim for defamation, assuming the

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statements were made falsely. Lynne Spears - both in her book and the declaration submitted herewith - asserts that Lutfi and Ghalib said and did certain things which Lutfi and Ghalib deny in their declarations. This operates to establish the elements of falsity required for the claims, and the contradiction also logically establishes that Spears at least acted with reckless disregard for the truth as she reported statements which the alleged speakers deny ever making. Lutfi also alleges that he has been damaged, describing the public ridicule and harassment which accompanied the publication of Spears' book. The Court finds this sufficient to establish Lutfi's defamation claims as a prima facie matter, and therefore denies the anti-SLAPP motion as to the first and second causes of action.

The Court also finds that the cause of action for intentional infliction of emotional distress based on this same constellation of facts is legally cognizable, and supported by sufficient evidence to establish Lutfi's probability of prevailing on the claim. See *Cervantez v. J.C. Penney Co.* (1979) 24 Cal.3d 579, 593. Therefore, the Court denies the defendant's anti-SLAPP motion in its entirety.

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

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I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 7/29/09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 7/29/09

John A. Clarke, Executive Officer/Clerk

By: _____

I. Ayala

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